SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 169

PENNSYLVANIA PUBLIC UTILITY COMMISSION,
Petitioner,

vs.

CHELTENHAM & ABINGTON SEWERAGE COMPANY,
Respondent.

MOTION TO CONSIDER PETITION ON TYPEWRITTEN RECORD FILED IN NO. 160, OCTOBER TERM, 1942.

Petitioner, Pennsylvania Public Utility Commission, respectfully represents:

1. The attached petition for writ of certiorari is addressed to the same proceedings as the appeal of Cheltenham & Abington Sewerage Company *v.* Pennsylvania Public Utility Commission, No. 160, October Term, 1942.

2. The record in the instant proceeding is identical with the record in the said appeal at No. 160, October Term, 1942.

3. Petitioner suggests that the record to be printed in the instant proceeding would substantially duplicate the record in the said appeal at No. 160, October Term, 1942, thus involving unnecessary printing and expense.

Wherefore, it is respectfully moved that your Honorable Court consider the attached Petition for Certiorari upon the record filed in the said appeal No. 160, October Term, 1942.

Respectfully submitted,

CLAUDE T. RENO,
Attorney General of Pennsylvania,
HARRY M. SHOWALTER,
SAMUEL GRAFF MILLER,
HERBERT S. LEVY,
Counsel for Petitioner.

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AUG 8 1942
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

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PENNSYLVANIA PUBLIC UTILITY COMMISSION,
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CHELTENHAM & ABINGTON SEWERAGE COMPANY.

BRIEF OF CHELTENHAM AND ABINGTON SEWERAGE COMPANY CONTRA PETITION OF PENNSYLVANIA PUBLIC UTILITY COMMISSION FOR A WRIT OF CERTIORARI.

George Henry Huft,
Counsel for Respondent.
Keough, Huft, Bohan & Kitchen,
Of Counsel.

Martin & Lyle, 302 Penfield Bldg., Phila., Pen. 0665, Keystn. Race 6067.

BRIEF OF CHELTENHAM AND ABINGTON SEWERAGE COMPANY CONTRA PETITION OF PENNSYLVANIA PUBLIC UTILITY COMMISSION FOR A WRIT OF CERTIORARI.

The petition for a writ of certiorari to the Supreme Court of Pennsylvania, filed by the Pennsylvania Public Utility Commission with this Court, states that the question presented is as follows:

> "Where a sewage utility knowingly collects rates which, although in accordance with a tariff approved by a regulatory commission, produced gross annual collections in excess of those permitted by prior Commission order, is it violative of the due process clause of the Federal Constitution for the Commission to hold the utility liable for reparations with regard to the portion of such collections made prior to a Commission order directing the filing of a new tariff?"

and further states, under the heading "Reasons Relied Upon for Writ of Certiorari," that "it will be of great importance both to the parties here involved and to the utility consuming public in Pennsylvania in general to have a decision as to whether or not a utility is relieved of the duty of compliance with a Commission order prescribing permissible maximum revenue level, by virtue of the fact that the Commission has approved a rate schedule apparently designed to comply with the prior rate order."

It is submitted that the question thus presented is already before this Court by virtue of an appeal taken by respondent from the same judgment of the Supreme

Court of Pennsylvania which the said Commission is now attempting to have reviewed—the said appeal having been allowed by order of Associate Justice Roberts under date of May 12, 1942 and docketed to No. 160, October Term 1942—as is plainly indicated by the following points contained in the Statement of Points Upon which Appellant Intends to Rely filed with this Court by respondent:

> "(1) That appellant was entitled to collect the rates set forth in its tariff effective July 1, 1931, which were prescribed or adopted prior to their effective date by the Public Service Commission of Pennsylvania acting in its quasi-legislative capacity, until January 1, 1937, the date as of which it was ordered by said Commission, in compliance with the direction of the Superior Court of Pennsylvania acting in its quasi-legislative capacity, to file a new tariff providing for reduced rates, without incurring any liability for reparations whatsoever."
>
> "(2) That the legislative act over which the Commission has jurisdiction in such case is the fixing of rates, and not the fixing of gross annual revenues independent of rates."
>
> "(3) That any finding and determination holding appellant liable for reparations for any portion of the period beginning July 1, 1931, and ending January 1, 1937, is unlawful, confiscatory and in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States."

and that a determination of said points by this Court will definitely answer the question which the Pennsylvania Public Utility Commission propounds in its said petition for a writ of certiorari.

It is therefore the contention of respondent that the Pennsylvania Public Utility Commission has not presented any reason which would justify this Court, in the exercise

of its sound judicial discretion, in granting its petition for a writ of certiorari to the Supreme Court of Pennsylvania, and that therefore certiorari should be denied.

Respectfully submitted,

GEORGE HENRY HUFT,
Counsel for Cheltenham and Abington Sewerage Company, Respondent.

KEOUGH, HUFT, BOHAN & KITCHEN,
Of Counsel.